

July 14, 2000

Ms. Sherry Green
Office of Site Remediation Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Mailcode 2272A)
Washington, D.C. 20460

Re: Superfund Recycling Equity Act Stakeholders Meeting -- Portable
Rechargeable Battery Association and Rechargeable Battery
Recycling Corporation Comments

Dear Ms. Green:

I write on behalf of the Portable Rechargeable Battery Association ("PRBA") and the Rechargeable Battery Recycling Corporation ("RBRC") to express our views on whether EPA guidance on the Superfund Recycling Equity Act's ("SREA") "reasonable care" standard for prospective recycling transactions is warranted. As more fully explained below, we believe it is.

1. Background on PRBA and RBRC

PRBA is a not-for-profit trade association representing major manufacturers of small sealed rechargeable batteries and the products powered by them. It represents over ninety percent (90%) of the world's rechargeable battery manufacturers and a majority of the world's battery-powered consumer product manufacturers. Rechargeable batteries provide power to numerous consumer products, including cordless and cellular telephones, camcorders, laptop computers, power tools and small appliances. Since its formation, PRBA has worked to support and assist in the development of recycling programs for used portable rechargeable batteries, including nickel-cadmium ("Ni-Cd") and small sealed lead acid ("SSLA") batteries.

With regard to SSLA batteries, PRBA has assisted in the development of several statewide pilot programs and plans. With regard to Ni-Cd batteries, we have coordinated our activities with the industry-established RBRC.

RBRC is a not-for-profit corporation established by the rechargeable power industry to implement and maintain rechargeable battery collection and recycling programs throughout the

U.S. and Canada. RBRC's *Charge Up to Recycle* Program – funded by license fees charged to battery and product manufacturers – collects used Ni-Cd batteries. The program offers easy-to-use-recycling plans to retailers, businesses, communities, and public agencies. RBRC pays for or shares the cost of collection containers, UPS shipping, and final recycling. Batteries collected by RBRC are sent for processing and recycling at a sophisticated, permitted facility in Pennsylvania. The recovered materials are used to produce, among other products, new Ni-Cd rechargeable batteries. Virtually all PRBA members are also RBRC licensees and thus support its program.

RBRC has developed a successful rechargeable Ni-Cd battery collection program. Through cooperation with public agencies and its network of participating retailers (including, for example, ACE Hardware, Ameritech, Black & Decker, Car Phone Store, Cellular One, Circuit City, Radio Shack, Sears, Target, Home Depot and Wal-Mart), RBRC has been able to rapidly increase the collection of used rechargeable Ni-Cd batteries from consumers. (The nearest collection location can be found by calling RBRC's helpline, 1-800-8-BATTERY, or by visiting RBRC's website at www.rbrc.org.)

2. Need for Guidance

PRBA and RBRC have considerable experience with the establishment and operation of rechargeable battery recycling programs. The risk of unwarranted CERCLA liability was an unnecessary and inappropriate impediment to the development of the RBRC Ni-Cd program and the several statewide SSLA programs which PRBA has helped coordinate. We thus welcomed enactment of CERCLA Section 127. It also will be helpful for EPA to provide guidance to industries such as ours on the practices necessary to meet the “reasonable care” standard of sections 127(c)(5) and (6). This will further minimize impediments to establishment and expansion of recycling programs.

We also believe it would be appropriate for EPA's guidance to take the form of a regulation promulgated pursuant to the Administrative Procedure Act (“APA”). The promulgation of a regulation will both provide a full and fair opportunity for public comment and avoid any future disputes over whether the requirements of the exemption have been met in particular circumstances. Furthermore, we believe Congress intended that EPA embody its views in regulations when it included in the statute Section 127(h), which authorizes EPA to “promulgate additional regulations concerning [section 127].” This would include regulations interpreting the “reasonable care” standard.

Whatever form EPA's guidance takes, it must be straightforward, easy to understand and written to accommodate all of the types of recycling transactions that are subject to the provisions of section 127. It also must cover all of the different types of recycling facilities to which recyclable materials will be sent.

3. Reasonable Care Principles

We believe that in order to meet the reasonable care standard, and thus to qualify for the recycling exemption, entities should be required to undertake a due diligence review of the recycling facility. This is what RBRC has done to evaluate the environmental track record of the recycling facility to which it sends materials for reclamation, and what PRBA members have done with regard to lead recycling facilities. We believe that these principles will best effectuate compliance with the SREA and protection of human health and the environment.

Based on our experience, we believe such a due diligence review should include two elements and the first is an on-site inspection. It should include a physical inspection of the facility to examine its operations, processes, permits and compliance status. It also should include reasonable inquiry to federal, state and local officials about the compliance status (*i.e.*, compliance with all significant operational requirements) of the facility and a search through a reasonably comprehensive commercial database expected to reveal evidence of environmental compliance or lack thereof. However, in the absence of major operational changes at a facility, and when the second element described below is met, we believe it is only necessary for such an inspection to occur every four or five years.

The second element would be an annual update of the information obtained through the more formal inspection. Generators should be required to inquire through secondary sources about the recycling facility's continued compliance with federal, state and local environmental laws and regulations, compliance orders and decrees. This inquiry could be performed in one of two ways:

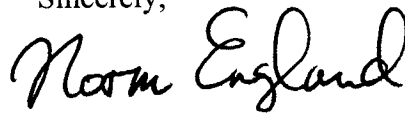
- Generators could make inquiries to the appropriate federal, state or local authorities to determine whether the facility continues to be in material compliance with environmental laws and regulations. This would involve phone calls or letters to the appropriate authority with oversight responsibility for the recycling facility. Generators would need to document their inquiries to show compliance with this requirement; or,
- Generators could undertake a search through a comprehensive commercial database that can be expected to reveal evidence of environmental compliance or lack thereof. To satisfy this requirement, a generator would need to document the databases searched and the results obtained from that review.

In our view, Section 127 was added to CERCLA in order to minimize the deterrent to responsible recycling that was created by the superfund liability regime. Fully overcoming this deterrent requires not only that clear standards for reasonable care be established, but that they be so unambiguous as to leave no room for entities such as RBRC to even be brought into the Superfund litigation morass.

4. Conclusion

We appreciate the opportunity to provide comments on the need for guidance on the reasonable care standard of the SREA. If you have any questions, please do not hesitate to call me at (770) 612-8826 or our General Counsel, David B. Weinberg, at (202) 383-6930.

Sincerely,

A handwritten signature in black ink that reads "Norm England". The signature is written in a cursive, flowing style.

C. Norman England

President and CEO

Portable Rechargeable Battery Association

Rechargeable Battery Recycling Corporation